

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

PUBLIC EMPLOYEES FOR  
ENVIRONMENTAL RESPONSIBILITY,  
962 Wayne Ave, Suite 610  
Silver Spring, MD 20910

*Plaintiff,*

v.

NATIONAL OCEANOGRAPHIC AND  
ATMOSPHERIC ADMINISTRATION,  
U.S. Department of Commerce  
1401 Constitution Avenue NW,  
Room 5128  
Washington, DC 20230

*Defendant.*

CIVIL ACTION NO. 19-3390

**COMPLAINT**

**PRELIMINARY STATEMENT**

1. Plaintiff Public Employees for Environmental Responsibility (“Plaintiff” or “PEER”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, as amended, to compel the United States National Oceanographic and Atmospheric Administration (“NOAA”) to disclose documents requested pursuant to FOIA. Specifically, PEER is seeking documents related to outside communications with Andrew (also known as “Drew”) J. Lawler, NOAA’s Deputy Assistant Secretary for International Fisheries.
2. To date, Defendant has failed to make a determination on Plaintiff’s FOIA request or to disclose to the Plaintiff the requested documents within the time stipulated under FOIA or provide an accurate date when such documents will be disclosed.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B). This Court also has federal question jurisdiction over this action under 28 U.S.C. § 1331.
4. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
5. This Court is a proper venue under 5 U.S.C. § 552(a)(4)(B) (providing for venue in FOIA cases where the plaintiff resides, or in the District of Columbia).
6. This Court has the authority to award reasonable costs and attorneys' fees under 5 U.S.C. § 552(a)(4)(E).

### **PARTIES**

7. Plaintiff, PEER, is a non-profit public interest organization incorporated in Washington, D.C. and headquartered in Silver Spring, Maryland, with field offices in California, Colorado, Florida, Massachusetts, and Tennessee.
8. Among other public interest projects, PEER engages in advocacy, research, education, and litigation relating to the promotion of public understanding and debate concerning key current public policy issues. PEER focuses on the environment, including the regulation and remediation of toxic substances, public lands and natural resource management, public funding of environmental and natural resource agencies, and governmental accountability. PEER educates and informs the public through news releases to the media, through its web site, [www.peer.org](http://www.peer.org), and through publication of the *PEER Review* newsletter.
9. Defendant NOAA, within the Department of Commerce, is an agency of the United States under 5 U.S.C. § 552(f)(1).

10. Defendant is charged with the duty to provide public access to records in its possession consistent with the requirements of the FOIA. The Defendant's refusal to provide the Plaintiff with the records requested on July 25, 2019, is a violation of the FOIA, a federal law.

### **STATEMENT OF FACTS**

11. Plaintiff is concerned that NOAA's Deputy Assistant Secretary for International Fisheries, Andrew Lawler, has had extensive communications with private interests that may be unduly influencing his actions at NOAA. This undue influence may weaken actions that NOAA would otherwise take to protect endangered species and international fish stocks from overharvesting and other risks. Further, Mr. Lawler's actions may be contrary to NOAA's mission, regulations and/or authorizing legislation.

12. On July 25, 2019, PEER requested information via FOIA concerning Mr. Lawler. Specifically, PEER requested: *copies of all communications of any nature after his appointment on September 17, 2018, that were sent by, involved, or named Mr. Lawler and that were sent to, or from, the following individuals (listed alphabetically):*

- *Kenny Alameda, U.S. Commissioner, Western and Central Pacific Fisheries Management Commission*
- *Kevin Bixler, Global Director, Group Fish*
- *Raymond D. Bogan, U.S. Commissioner, International Commission for the Conservation of Atlantic Tunas, Sinn, Fitzsimmons, Cantoli, Bogan & West*
- *Stuart Chikami, Manager, Western Pacific Fisheries Inc.*
- *Max Chou, President, South Pacific Tuna Corporation*
- *Raymond Clarke, Vice President, South Pacific Tuna Corporation*
- *Christopher Dahl, Staff Officer-HMS, Pacific Fishery Management Council*
- *Ricardo da Rosa, General Manager, Pacific Princess*
- *Larry Da Rosa, Member, American Tunaboat Association*
- *Glenn Roger Delaney, Glenn Roger Delaney Consulting*
- *Randal J. DeSilva, Managing Owner, DeSilva Sea Encounter Corporation*
- *Jack Devnew, Compass Insurance Solutions*
- *Jose F. Finete, Member, American Tunaboat Association-FV Jeanette*
- *Jose Finete, Boat Owner, C&F Fishing*
- *Peter H. Flournoy, General Counsel, American Fishermen's Research Foundation*

- *Svein Fougner, Policy Advisor, Hawaii Longline Association*
- *Carry Gann, Senior Manager, Seafood Procurement, StarKist SeaFood*
- *Michael Goto, U.S. Commissioner, Western and Central Pacific Fisheries Management Commission*
- *John E. Graves, Chair, U.S. Advisory Committee to ICCAT Commissioners; Professor, Virginia Institute of Marine Science – College of William and Mary*
- *Brian Hallman, Executive Director, American Tunaboat Association*
- *Timothy Johns, U.S. Commissioner, Western and Central Pacific Fisheries Management Commission*
- *Mike Kraft, VP Sustainability, Bumble Bee Seafoods*
- *Peter Lamy, President, ICS*
- *Gerald B. Leape, Campaign Director, Pew Charitable Trusts*
- *Dorothy Lowman, U.S. Commissioner, Western and Central Pacific Fisheries Management Commission*
- *Michael Luisi, Maryland Department of Natural Resources*
- *Josh Madeira, Monterey Bay Aquarium*
- *Sean Martin, President, Hawaii Longline Association*
- *Michael McGowan, Chairman, Global Companies*
- *Matthew Owens, Director, Sustainability, Tri Marine*
- *Michael Pierdinock*
- *Jeffrey Pike, Pike Associates*
- *Frederick McGrew Rice, Council Member, Western Pacific Fishery Management Council*
- *William M. Sardinha, Vessel Manager, Sardinha & Cileu Management*
- *David Schalit*
- *Phil Shin, Senior Manager, StarKist SeaFood*
- *Kitty Simonds, Executive Director, Western Pacific Regional Fishery Management Council*
- *Eugenio Piñeiro Soler, U.S. Commissioner, International Commission for the Conservation of Atlantic Tunas*
- *Archie Soliai, Western Pacific Fishery Management Council*
- *James S. Sousa, Director, GS Fisheries*
- *Rick Weber, South Jersey Marina*

13. On July 25, and again on July 31, NOAA acknowledged receipt of PEER's FOIA request and assigned it reference number DOC-NOAA-2019-001853.

14. On August 27, the undersigned PEER attorney notified NOAA that production in response to its FOIA request was due.

15. On Aug. 28, NOAA sent PEER a letter by which it invoked a ten-business day extension pursuant to 15 C.F.R. 4.6(d)(2) and stated it “anticipate[d] a response to your request by September 12, 2019.”
16. On Sept. 6, 7 “business days” later, NOAA requested a clarification on the scope of PEER’s FOIA request. On the same day PEER responded: “our request ‘is limited to only [communications] relating to Mr. Lawler and the above named individuals.’ To clarify further, the scope can be limited to communications sent by any of the named individuals to Mr. Lawler, or by Mr. Lawler to any of the named individuals”. On Sept. 11, the tenth business day after the extension was invoked, NOAA acknowledged receiving this scope clarification.
17. On Sept. 24, Sept. 27, and Oct. 2, PEER reminded NOAA that it was past its anticipated Sept. 12 production date and requested that its production be expedited.
18. On Sept. 26 and October 7, NOAA responded to PEER indicating it would produce documents, but as of the date of this complaint it has failed to do so.

### **CAUSE OF ACTION**

19. Plaintiff incorporates the allegations in the preceding paragraphs.
20. The FOIA requires federal agencies to respond to public requests for records, including files maintained electronically, to increase public understanding of the workings of government and to provide access to government information. FOIA reflects a “profound national commitment to ensuring an open Government” and agencies must “adopt a presumption in favor of disclosure.” Presidential Mem., 74 Fed. Reg. 4683 (Jan. 21, 2009).
21. The FOIA requires agencies to determine within 20 working days after the receipt of any FOIA request whether to comply with the request. 5 U.S.C. § 552(a)(6)(A)(i). Agencies may only

extend this time period for an additional 10 working days in “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B)(i). The FOIA also provides that upon request, agencies are to make records “promptly available.” 5 U.S.C. § 552(a)(3)(A).

22. Twenty working days from July 25, 2019, (the date Defendant states it received Plaintiff’s FOIA request) was Aug. 26.
23. As of the date of this filing, Plaintiff has received no documents responsive to its July 25, 2019, FOIA request.
24. Administrative remedies are deemed exhausted when an agency fails to comply with the applicable time limits. 5 U.S.C. § 552(a)(6)(C)(i). Having fully exhausted its administrative remedies for its July 25, 2019 FOIA request, PEER now turns to this Court to enforce the remedies and public access to agency records guaranteed by the FOIA.
25. Defendant’s conduct amounts to a denial of the Plaintiff’s FOIA request. Defendant is frustrating Plaintiff’s efforts to adequately understand and educate the public regarding the activities of NOAA and, in particular, its Deputy Assistant Secretary for International Fisheries, Andrew Lawler.
26. Plaintiff has constructively exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i), and now seeks an order from this Court requiring the Defendant to immediately produce the records sought in Plaintiff’s FOIA request, as well as other appropriate relief, including attorneys’ fees and costs.

27. Defendant's failure to make a determination on or disclose the documents requested in Plaintiff's July 25, 2019 FOIA request within the time frame mandated under FOIA is a denial and wrongful withholding of records in violation of 5 U.S.C. § 552.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff respectfully requests that this Court:

- i. Enter an order declaring that Defendant wrongfully withheld requested agency documents;
- ii. Issue a permanent injunction directing Defendant to disclose to Plaintiff all wrongfully withheld documents;
- iii. Maintain jurisdiction over this action until Defendant is in compliance with the FOIA, the Administrative Procedure Act, and every order of this Court;
- iv. Award Plaintiff attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and
- v. Grant such additional and further relief to which Plaintiff may be entitled.

Respectfully submitted on November 8, 2019,

/s/ Peter Jenkins  
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